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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,583	01/31/2006	Futoshi Kameda	0408947382	5113
9629 7590 03/01/2007 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			EXAMINER BRAKEWOOD, CANDACE ELIZABETH	
			ART UNIT 3721	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			03/01/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/566,583	<b>Applicant(s)</b> KAMEDA, FUTOSHI	
	<b>Examiner</b> Candace Brakewood	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2006 and 24 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is in response to applicant's amendment received on January 24, 2007.

#### ***Drawings***

2. The replacement drawings were received on January 24, 2007. These drawings are acceptable.

#### ***Specification***

3. The amendments to the specification, received on January 24, 2007, are acknowledged and accepted.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "with an end portion substantially perpendicularly extending from each of the two ends of the upper portion" is indefinite in that the phrase "with an end portion" implies that there is only one end portion, but the phrase "from each of the two ends" implies that there are two end portions.

#### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Kufel, Jr., et al. (3,029,436) for the same reasons set forth in paragraph 10 of the previous Office Action (paper no. 20061023).

Regarding the amendment to claim 1, the leading end of the connected staples is formed in a C-shape having an upper portion extending lengthwise and having two ends, where each end of the upper portion has a substantially perpendicularly extending end portion, as is shown in Fig. 6 of Kufel, Jr., et al. ('436).

It should also be noted that the support surface (the entire top surface of the pusher, 36, including the top of 38, 39, 41 and 36, as shown in Fig. 4) is located near and under the center of the upper portion of the leading end staple, as shown in Fig. 8.

With regards to the amendment to claim 5, the leading end of the staple is driven by the driver (21, 22) and moved downward toward the sloping protrusion surface (the front surface of the pusher, 36, which is closest to driver, 22). The pusher (36) retreats in a direction opposite to the guide surface (22, 24), as shown in Fig. 10.

### ***Response to Arguments***

8. Applicant's arguments filed January 24, 2007 have been fully considered but they are not persuasive.

9. The applicant contends that Kufel, Jr., et al. ('436) does not have a support surface located near and under the center of the upper portion of the leading end of the staple, as recited in the amended claim 1. On the contrary, the support surface (the entire top surface of the pusher, 36, including the top of 38, 39, 41 and 36, as shown in

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Fig. 4) is located near and under the center of the upper portion of the leading end staple, as shown in Fig. 8. The examiner asserts that claims are given their broadest reasonable interpretation. In this instance, the entire top surface of the pusher, 36, (including the top of 38, 39, 41 and 36) is deemed to support the leading end staple as it is driven because it contacts/supports the staple first via the beveled faces 38 of the plate 36, and then via the front surface of the pusher plate (column 3, lines 67-75). It should be noted that the claims are not limited to having the center portion of the support surface (in the lengthwise direction, corresponding to the top surface of 41) *contact* the center of the upper portion of the leading end staple.

For the reasons above, the grounds of rejection are deemed proper.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kitamura (6,557,744), Maynard (1,815,066), Sachleben (2,556,002), Hubbard (1,654,170) and Peterseen (2,959,876) are cited to show related inventions.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candace Brakewood whose telephone number is 571-272-3115. The examiner can normally be reached on Monday-Thursday, 7am-5:30pm.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Candace Elizabeth Brakewood  
Examiner  
Art Unit 3721  
February 22, 2007



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700